

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95,	)	
and 101 To Establish Uniform License Renewal,	)	
Discontinuance of Operation, and Geographic	)	WT Docket No. 10-112
Partitioning and Spectrum Disaggregation Rules	)	
and Policies for Certain Wireless Radio Services	)	
	)	
Imposition of a Freeze on the Filing of Competing	)	
Renewal Applications for Certain Wireless Radio	)	
Services and the Processing of Already-Filed	)	
Competing Renewal Applications	)	

**REPLY COMMENTS OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”)<sup>1/</sup> submits the following reply to the comments filed in response to the Public Notice inviting parties to update the record in the above-referenced proceeding,<sup>2/</sup> in which the Commission proposed rules intended to make the licensing requirements across certain wireless services more consistent.

**I. INTRODUCTION AND SUMMARY**

Since the Commission issued the *NPRM*, T-Mobile has become America’s Un-carrier, redefining the way consumers and businesses buy wireless services through leading product and service innovation. Including the MetroPCS brand, T-Mobile offers nationwide wireless voice,

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<sup>1/</sup> T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

<sup>2/</sup> *Amendment of Parts 1, 22, 24, 27, 74, 80, 95 and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Notice of Proposed Rulemaking, 25 FCC Rcd. 6996 (2010) (“*NPRM*”); *Wireless Telecommunications Bureau Seeks to Update the Record in the Wireless Radio Services Reform Proceeding*, Public Notice, DA 17-409, WT Docket No. 10-112 (rel. May 2, 2017) (“*Public Notice*”).

text, and data services to over 72 million subscribers.<sup>3/</sup> T-Mobile has deployed 4G LTE to 314 million people, and it expects to provide 4G LTE to 321 million people by the end of the year.<sup>4/</sup> Recently, T-Mobile became the first US wireless company to announce plans for truly nationwide 5G, leveraging multiple spectrum bands to deliver coast-to-coast 5G coverage.<sup>5/</sup>

T-Mobile appreciates the Commission's efforts to better enable T-Mobile to bring new, cutting edge services to more Americans by harmonizing regulatory requirements, so it can focus on what is important – innovating and investing in its network. Therefore, in this proceeding, the Commission should adopt rule changes that would *reduce* regulatory burdens on providers of mobile services. In particular, as other commenters in this proceeding make clear, the Commission should take the following actions:

- Reject the proposed renewal showing for certain geographic-area based licenses.
- Reject the proposed regulatory compliance demonstration.
- Prohibit competing renewal applications.
- Adopt a uniform definition of “permanent discontinuance of service” for wireless services, while allowing providers to discontinue service for longer than permitted under certain circumstances.

## **II. THE COMMISSION SHOULD REJECT A PROPOSED RENEWAL SHOWING**

In the *NPRM*, the Commission proposed imposing a new renewal showing on certain wireless services licensed on a geographic-area basis, consistent with rules governing the 700 MHz band.<sup>6/</sup> This detailed demonstration would require applicants for renewal to show that they have been and are continuing to provide service to the public and are compliant with the

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<sup>3/</sup> T-Mobile News Release, *T-Mobile Celebrates 4 Years as a Public Company with Industry Leading Customer & Financial Growth and Game-Changing Spectrum Auction Results* (Apr. 24, 2017), <https://newsroom.t-mobile.com/news-and-blogs/q1-2017-earnings.htm>.

<sup>4/</sup> *Id.*

<sup>5/</sup> T-Mobile Press Release, *T-Mobile Announces Plans For Real Nationwide Mobile 5G*, (May 2, 2017), <http://investor.t-mobile.com/file/Index?KeyFile=2000374745>.

<sup>6/</sup> *NPRM* ¶ 17.

Commission’s rules and policies.<sup>7/</sup> The Commission made clear that this showing is separate from any required mid- and end- of term performance requirements, which would remain unchanged.<sup>8/</sup>

T-Mobile supports robust performance requirements to ensure that spectrum is not warehoused and is put to use. T-Mobile acquires spectrum, whether at auction or in the secondary market, for just that purpose – to meet the growing demand for additional network capacity and coverage. A meaningful and substantial service demonstration accomplishes that goal.<sup>9/</sup> In contrast, imposing a separate renewal demonstration would introduce significant costs and uncertainty into the renewal process, and it is unnecessary once a licensee meets the applicable build out requirements. As CTIA noted, the current proposal would “compel licensees to create and retain detailed records of their operations during the entire license term and submit voluminous information” with “no assurance that the records they maintained for a decade or longer and the information they filed at renewal time would be sufficient to secure renewal[.]” especially given that the proposal “impose[s] impossibly vague obligations[.]”<sup>10/</sup>

A renewal showing would encourage the wrong outcomes. As T-Mobile previously stated, the resulting uncertainty would diminish licensees’ incentives to invest in facilities and services and to innovate, forcing them instead to focus on satisfying the various renewal

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<sup>7/</sup> *Id.* ¶ 17.

<sup>8/</sup> *Id.* ¶¶ 22, 24.

<sup>9/</sup> T-Mobile supports the Commission’s efforts to enforce substantial service obligations. Recently, T-Mobile urged the Commission to uphold its appropriate decision to terminate hundreds of millimeter wave band licenses for which the substantial service requirements were not satisfied and encouraged the Commission to put these licenses up for auction. *See* Reply Comments of T-Mobile USA, Inc., ULS File Nos. 0007652635 and 0007652637 (filed Apr. 13, 2017).

<sup>10/</sup> Further Comments of CTIA, WT Dkt. No. 10-112, at 5 (filed June 1, 2017) (“CTIA Further Comments”); *see also* Comments of Verizon, WT Dkt. No. 10-112, at 5 (filed June 1, 2017) (“Comments of Verizon”) (“[T]he renewal showing does not provide licensees with legally sufficient notice as to what conduct is necessary to secure renewal. . . . [I]t proposes impossibly vague and ambiguous standards . . . And it offers no guidance as to how the Commission will weigh multiple factors in assessing renewal.”).

factors.<sup>11/</sup> Verizon agreed, stating that the renewal showing would “compel licensees to expend significant personnel resources” despite a lack of “evidence of problems that justify imposing the burdens” or of the “tangible benefits it would produce in driving expanded or improved service.”<sup>12/</sup>

As noted below, T-Mobile supports Commission action that would create a renewal expectancy for those licensees that invest in their spectrum by meeting substantial service requirements. However, in order to have a meaningful renewal expectancy, licensees should not be required to again demonstrate substantial service once they have shown that they have made the investment necessary to satisfy initial performance requirements. Instead of the ambiguous and burdensome renewal requirement proposed, the Commission should adopt the certification approach proposed for site-based licenses for all wireless licenses subject to this proceeding.<sup>13/</sup> This certification would achieve the Commission’s goals of harmonizing wireless services rules while also promoting investment and efficient use of spectrum resources.<sup>14/</sup> The certification

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<sup>11/</sup> Reply Comments of T-Mobile USA, Inc., WT Dkt. No. 10-112, at 3 (filed Aug. 23, 2010); *see also* Comments of Sensus USA Inc. and Sensus Spectrum LLC, WT Dkt. No. 10-112, at 6 (filed June 1, 2017) (“Comments of Sensus”) (“Licensees and their investors require certainty that they will retain access to spectrum to justify investing the capital required to deploy networks. Without an expectation of renewal or clear standards which a licensee can ensure it meets, a licensee has no assurance that its investments will not become stranded by the whim of a future Bureau that determines its Renewal Showing is insufficient.”).

<sup>12/</sup> Comments of Verizon at 4; *see also* Comments of Sensus at 2 (“The rules proposed in the NPRM would impose staggering paperwork requirements and regulatory burdens, with scant countervailing benefits.”).

<sup>13/</sup> *See NPRM* ¶ 34;

<sup>14/</sup> *See id.* ¶ 7; *cf.* Comments of Verizon at 4 (arguing that “the renewal showing conflicts with the Commission’s stated goal of harmonizing its rules across different wireless services” because “[i]t would impose significant costs and burdens on licensees holding geographic-based licenses – but not on other licensees”); Further Comments of CTIA at 6 (noting that the Commission did not impose any such renewal showing in the recently adopted *Spectrum Frontiers Report and Order* authorizing new millimeter wave licenses); Comments of Sensus at 7 (“Adopting a streamlined certification requirement for both geographic and site-based licenses would harmonize the Commission’s renewal processes for all wireless licensees identified in the NPRM and would avoid unnecessary and costly regulatory burdens both for licensees and Commission staff.”).

would also provide a sufficient basis upon which the Commission could grant renewal applications, by requiring a “licensee to verify that it is complying with its authorization, including any buildout, spectrum utilization, or other performance requirements.”<sup>15/</sup> Moreover, “where a licensee cannot make that certification, the Commission will be notified and can take appropriate action.”<sup>16/</sup>

### **III. THE PROPOSED REGULATORY COMPLIANCE DEMONSTRATION IS UNNECESSARY AND OVERLY BURDENSOME**

In the *NPRM*, the Commission proposed to require all renewal applicants, whether licensed by geographic area or by site, to file “copies of all FCC orders finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee, an entity that owns or controls the licensee, an entity that is owned or controlled by the licensee, or an entity that is under common control with the licensee (whether or not such an order relates specifically to the license for which renewal is sought).”<sup>17/</sup>

The Commission’s proposal is unnecessarily broad and overly burdensome. As T-Mobile previously noted, (i) the requirement is duplicative of information already contained in the Commission’s own records; (ii) the scope of the proposed requirement would be especially onerous for large companies, as it would include a significant number of operating affiliates; and (iii) the lack of time limit could force licensees to provide orders and rulings dating far beyond the license term.<sup>18/</sup> As a result, the proposal would require a burdensome level of due diligence

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<sup>15/</sup> CTIA Further Comments at 3.

<sup>16/</sup> *Id.*

<sup>17/</sup> *NPRM* ¶ 38.

<sup>18/</sup> See Comments of T-Mobile USA, Inc., WT Dkt. No. 10-112, at 12 (filed Aug. 6, 2010); see also Supplemental Comments of the Enterprise Wireless Alliance, WT Dkt. No. 10-112, at 6 (filed June 1, 2017) (“Some [site-based PLMR licensees] hold hundreds or even thousands of individual licenses, a quantity dictated by the FCC licensing rules and the limitations of ULS, not by licensee choice. It is not reasonable to require them to provide compliance information related to every affiliated license when

that would be difficult for many licensees to meet. Instead, the Commission may wish to consider imposing a tailored document production requirement relating to the license for which renewal is requested. Such an obligation could assist the Commission in determining whether renewal for that license is appropriate based on any unique circumstances regarding the license without requiring the licensee to engage in excessive document review and production.

#### **IV. THE COMMISSION SHOULD PROHIBIT COMPETING RENEWAL APPLICATIONS**

In the *NPRM*, the Commission proposed to prohibit the submission of applications that compete and are mutually exclusive with renewal applications.<sup>19/</sup> T-Mobile strongly supports this proposal. The ability to submit competing applications is directly contrary to a renewal expectancy, and “the costs and burdens on the Commission and licensees from that process outweigh any benefits.”<sup>20/</sup> As the Commission correctly notes, “the Commission’s established petition to deny process affords interested parties an appropriate mechanism to challenge the level of service and qualifications of licensees seeking renewal.” Under this procedure, a licensee will “continue to be required to defend its performance if challenged.”<sup>21/</sup> Moreover, as Verizon states, prohibiting competing renewal applications “will align the rules for other services with the rules for newer geographic-based licenses, including the AWS-3, AWS-4, and 600 MHz bands.”<sup>22/</sup>

And if a petition is granted, the spectrum will be returned to the Commission and the challenging party will have the opportunity to participate in an auction of the spectrum – a

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filing a renewal application for any license, particularly since that information is already in the FCC’s possession.”).

<sup>19/</sup> *NPRM* ¶ 40.

<sup>20/</sup> Verizon Comments at 7.

<sup>21/</sup> CTIA Further Comments at 9.

<sup>22/</sup> Verizon Comments at 7.

process that “most likely will result in the licensing of spectrum to a party that most highly values the spectrum.”<sup>23/</sup> The Communications Act contemplates that when there are competing applications, the Commission will conduct an auction to award a license.<sup>24/</sup> Allowing applicants to evade Congressional intent by submitting competing applications during the renewal process is contrary to the public interest. The competing application framework is an artifice of a time before auctions, and the Commission should adopt its proposal to eliminate it.

Similarly, the Commission should reject NTCH’s request that the Commission open a window for interested parties to challenge renewals granted conditionally during this proceeding.<sup>25/</sup> NTCH claims that such a window is necessary as it “would have been pointless over the last seven years” to file a petition to deny, and “a petitioner would not even know if it had standing to file . . . since the effect of disqualifying the incumbent could not be known” until this proceeding was resolved. These arguments are baseless. In fact, the Commission explicitly stated in the *NPRM* that “[i]nterested parties may file petitions to deny” renewal applications during the pendency of this proceeding, and that if a petition was filed, the Commission would act on the relevant application only if it could resolve the issues raised in the petition.<sup>26/</sup> The Commission also acknowledged parties may file petitions to deny to “preserve an opportunity to file a competing application[,]” although these petitions would not preclude a conditional renewal grant.<sup>27/</sup> NTCH itself admits that the Commission continued to accept petitions to

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<sup>23/</sup> *NPRM* ¶ 41.

<sup>24/</sup> *See* 47 U.S.C. § 309(j).

<sup>25/</sup> *See* Further Comments of NTCH, Inc., WT Dkt. No. 10-112, at 5-7 (filed June 1, 2017) (“NTCH Comments”).

<sup>26/</sup> *NPRM* ¶¶ 112-113.

<sup>27/</sup> *Id.* ¶ 113

deny.<sup>28/</sup> To try to evade this fact, NTCH selectively quotes unrelated sections of the *NPRM* regarding filing of competing renewal applications, which the Commission had suspended.

NTCH's contentions are without merit, and the Commission should reject them.

**V. THE COMMISSION SHOULD ADOPT A UNIFORM DEFINITION OF “PERMANENT DISCONTINUANCE OF SERVICE” FOR WIRELESS SERVICES**

The *NPRM* sought comment on adopting a uniform definition of permanent discontinuance of service, the consequence of which is automatic license termination. The Commission proposed that the time period for permanent discontinuance of service should be defined as 180 days.<sup>29/</sup> T-Mobile supports strong rules that will return spectrum that is not being used. However, regardless of the timeframe adopted, the discontinuance rule should apply only after a licensee's initial substantial service deadline. Until then, licensees must be free to implement and deploy service as their business model dictates, so long as substantial service requirements are ultimately satisfied.

The Commission should also ensure that the rule provides a “safety valve” for licensees that must terminate operations for more than 180 days for legitimate reasons, upon notice to the Commission. For instance, as CTIA correctly points out, “some licensees operate in areas where there is seasonal or intermittent use of their networks, making a 180-day rule problematic[.]”<sup>30/</sup> And, “[l]icensees also may take down service on a particular spectrum block to upgrade networks to new technologies[.]”<sup>31/</sup> Verizon notes that “[n]etwork upgrades and technology

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<sup>28/</sup> See NTCH Comments at 5.

<sup>29/</sup> *NPRM* ¶ 57.

<sup>30/</sup> CTIA Further Comments at 9.

<sup>31/</sup> *Id.*; see also Verizon Comments at 7-8 (“The Commission should, however, incorporate flexibility in this rule to accommodate the possibility that licensees may need to discontinue operations for longer than that period to upgrade parts of their networks or transition to new technologies.”).



transitions typically require dismantling antennas and other equipment so they can be replaced[.]” which “sometimes necessitates ceasing operations on those facilities for periods that may last longer than 180 days.”<sup>32/</sup> For instance, the transition “from 3G to 4G, and soon to 5G . . . could shut down operations on blocks of frequencies for periods exceeding 180 days.”<sup>33/</sup> The Commission should therefore grant providers needed flexibility by ensuring that the rule adopted includes a simple mechanism through which providers may notify the Commission of a discontinuance of service extending longer than 180 days and thereby stay the termination of any affected licenses.<sup>34/</sup> Creating such a safety valve will not impact the Commission’s efforts to ensure that spectrum is put to productive use – it would only be available to licensees that have already met their substantial service obligation and later face legitimate circumstances under which operations must be paused for greater than 180 days. Those licensees will have every incentive to re-initiate operations as quickly as possible to leverage the value of their spectrum assets.

## **VI. CONCLUSION**

T-Mobile continues to support the Commission’s efforts to harmonize the license requirements that apply to wireless licensees. To ensure the greatest investment and innovation in wireless services, the Commission should:

- Reject the proposed renewal showing for certain geographic-area based licenses.

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<sup>32/</sup> Verizon Comments at 8.

<sup>33/</sup> CTIA Further Comments at 9; *see also* Verizon Comments at 7-8 (“The Commission should, however, incorporate flexibility in this rule to accommodate the possibility that licensees may need to discontinue operations for longer than that period to upgrade parts of their networks or transition to new technologies.”);

<sup>34/</sup> To prevent abuse of the notification process, the Commission may retain the ability to reject notifications that insufficiently justify discontinuance of service, providing licensees with 30 days to re-initiate service upon such rejection. For licensees that are able to provide the Commission with notification of discontinuance 60 days or greater in advance, such notification should be deemed accepted unless the Commission acts to the contrary within 30 days.

- Reject the proposed regulatory compliance demonstration.
- Prohibit competing renewal applications.
- Adopt a uniform definition of “permanent discontinuance of service” for wireless services, while allowing providers to discontinue service for longer than permitted under certain circumstances.

Respectfully submitted,

/s/ Cathleen A. Massey

Cathleen A. Massey  
Steve B. Sharkey  
Josh L. Roland

T-MOBILE USA, INC.  
601 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, DC 20004  
(202) 654-5900

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